IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.94 OF 1997.

Union of India : Appellants.

versus

Shri Laxmi Trading Corporation : Respondent.

Mr.A.N.Samant for the appellants.

None for the respondent.

CORAM : D.G.DESHPANDE,J.

DATED : 2nd May 2005.

ORAL ORDER

1. Heard Mr.Samant for the Union of India. Nobody is present for the respondent, though served. This appeal is filed by the Union of India against the order of the Railway Claims Tribunal, Mumbai granting decree of Rs.46,114.50 with appropriate costs and interest to the claimant/respondent.

2. Mr.Samant made three submissions viz.

that the RR was with endorsement "said to contain" and the respondent has not discharged their burden by proving as to how much quantity of rice or bags of rice were entrusted to the railway for transport. Secondly, he contended that the appellant has raised defence of accord and satisfaction and nothing remained to be paid. Thirdly, he contended that the interest awarded by the tribunal at 12% per annum was exorbitant in the present scenario.

3. It was the case of the respondent they had despatched 250 bags of rice and 490 kattas of rice under RR No.987366 dated 16th February 1993 at railway risk rate ex-Garhashankar to Bombay. The consignment was not delivered. Claim was lodged for non-delivery. However afterwards the wagon holding 490 kattas of rice arrived but the other wagon holding 250 bags of rice did not arrive at that time. The second wagon arrived at 2nd December 1993 i.e. after about 10 months. It was completely rotten, damaged and decayed. The damage was assessed by the professional surveyors of the railway. Certificate was issued. And therefore in this background the claim petition came to be filed before the

tribunal.

4. When this is a case of delivery after 10 months, they the railway are fully responsible for the loss and there cannot be any doubt about it. The goods were entrusted to the railway on 16th February 1993 and the second wagon holding 250 bags of rice reached destination at Wadibunder on 2nd December 1993. Out of 250 bags when the damage was assessed it was found that 114 bags were damaged to the extent of 100% and 136 bags were damaged to the extent of 50%. It will be therefore clear from this document that 250 bags were there in the second wagon as per the RR. Therefore, there is no question of respondent proving how much bags were loaded. The defence of said to contain is not at all available to the railway.

5. Secondly, it was urged by Mr.Samant that the appellant had sent a cheque of Rs.63,240/- and adjustment was given by the claimant. Even this cannot be accepted as a defence that by the payment of the aforesaid amount, the appellants are absolved of their liability.

6. The next contention of Mr.Samant was that the interest that was awarded by the tribunal at 12% was not proper in view of the judgment of this Court reported in **2005 (1) Mh.L.J.165 Maharashtra State Electricity Board vs. Union of India.** It was a claim against the railways and the interest was awarded ultimately by the High Court at 9% per annum. I had also followed the same judgment earlier. Therefore, in view of this judgment the rate of interested is reduced to 9%.

:ORDER:

The appeals are partly allowed.

The rate of interest is reduced to 9% p.a.

No order as to costs.

[D.G.DESHPANDE]

02/05/2005 JUDGE.